

EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

DIAGNOSTIC RESOURCE GROUP, L.L.C.

Plaintiff

vs.

TOSHIBA AMERICA
MEDICAL SYSTEMS, INC.
Defendant

Case No.: L- 02-CV-3020

AFFIDAVIT OF KIM STEHMAN

I am Kim Stehman, a competent adult and if called to testify I would state from my personal knowledge as follows;

1. I am experienced in the operation of radiological equipment such as the equipment that was the subject of the sale that forms the basis of this case;
2. In the transaction that forms the underlying basis for this case, Diagnostic Resource, sought to buy a Magnetic Resonance Imaging scanner from Toshiba;
3. I am certified in the operation of this equipment and have operated this equipment for many years;
4. The sale and installation of these devices takes several steps;
5. On or about March 31, 1998, the Defendant has produced a

document indicating that the equipment had been mechanically installed and power to the unit was connected, and this is true;

6. However, the unit still needed to be calibrated and personnel trained in order to properly operate the equipment, which was to provide highly sophisticated and precise scans for the care of patients;

7. At the time that the power had been turned on, the equipment was in no way ready for patient care;

8. Indeed, it can often take several weeks or longer for equipment to be fully calibrated and ready for patient care;

9. Diagnostic Resource Group and Toshiba had agreed that the warranty would start from the time that the equipment was accepted;


10. The acceptance of the equipment occurred in November, 1998;

11. After April 1, 1999, and indeed throughout April-June, 1999, Toshiba continued to come out and to fix the scanner without charge under the warranty as it had prior to April 1, 1999;

12. It was only on July 5, 1999 that Toshiba asserted for the very first time that the warranty had expired;

13. On July 5, 1999, I, Kim Stehman got a call from Kent the service engineer that the alarm for the magnet had gone off but that he had been told by his supervisors that he could not fix the equipment.

I DECLARE UNDER PENALTY OF PERJURY THAT THE ABOVE
INFORMATION IS TRUE AND ACCURATE BASED UPON MY
PERSONAL KNOWLEDGE.

A handwritten signature in cursive script, appearing to read "Kim Stehman", is written over a horizontal line.

Kim Stehman, AFFIANT